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Current Topics.

Mr. St. John Hutchinson, K.C.

THE death of Mr. ST. JOHN HUTCHINSON, K.C., on 24th October, at the comparatively early age of fifty-eight, inflicts a grievous loss on the criminal Bar and on his wide circle of friends. A pupil of Sir HOLMAN GREGORY, he was called to the Bar by the Middle Temple in 1909. He chose the South-Eastern Circuit, where his eloquence and quickness as a cross-examiner procured him substantial practice. He was prosecuting counsel for some years to the Post Office at the Central Criminal Court, and owing to his special knowledge of abnormal psychological cases he was frequently called upon to defend in cases where there was a doubt as to the normality of the defendant. His knowledge of psychology was allied to considerable skill and tact in handling this class of case, one of the best examples of which was that of McMahon in 1937, in which the defendant fired a shot at the King while the latter was riding in a procession. In 1917 he was assistant legal adviser to the Ministry of Reconstruction, and from 1928 to 1930 he was Recorder of Hythe. In 1930 he was made Recorder of Hastings, and he held that office until the date of his death. Besides his career at the Bar, he had literary and artistic interests which brought him into touch with famous men. Lytton Strachey was an uncle of his wife, and George Moore, the novelist, and Henry Tonks, the artist, were both friends of Mr. Hutchinson. He was on the executive committee of the Contemporary Art Society, and only a few days before his death he was appointed a trustee of the Tate Gallery. He was a man of extraordinary ability and charm, and his passing is mourned by all who knew him, whether lawyers or laymen.

International Justice.

IT is a healthy sign of the times that the voice of the Church is making itself heard in more spheres of life than that of mere formal churchgoing. The relegation of morality and religion to one day in the week has been productive of untold evil in the past, and there are many indications that this is at last being realised. The ARCHBISHOP OF CANTERBURY, at a meeting at Brighton on 19th October in connection with the "Religion and Life Week," made an admirably forceful statement of the reasons why the "naked arbitration of force irrespective of justice" is intolerable. He said that he was convinced that we were right to fight against that to the bitter end. In a world in which international relations were as yet but little organised we were doing what we could to put force at the back of justice. We must either renounce force altogether, as the pacifists urged, or subject it to the control of law. The State had force at its disposal, not because force itself was the end of the State, but to secure that force was never lawlessly used. The same principle had to be applied in the dealings of nations with one another, and there would be need for us to arm whatever authority we established to judge between the nations with the means of enforcing its judgment. Warfare meant that we had to be as ready to fight in the cause of justice when our own interests were not affected as we should be if they were. When we really put justice before our own interests he did not think there would be any need to use that force. The Archbishop's message crystallises the hopes of mankind in a world in which international justice has grown and has seemed to decay. It was largely the lack of faith in the power of man to enforce international justice which brought about the rising international lawlessness of the last decade and culminated in the present war. This mistaken lack of faith, combined with a fatalistic pacifism, must not be repeated. We must rebuild international law on solid and permanent foundations. We can because we must.

Reform of Local Government.

TO-DAY, as in 1835, when the first Municipal Corporations Act was passed, our system of local government is tending to degenerate into a conglomeration of chaotic small units each with their separate and sometimes conflicting functions. A remedy has recently been suggested as a result of the establishment of the non-democratic regional authorities set up by the Ministry of Home Security. These are war-time authorities, and are non-democratic, responsible to no one save a Minister, and therefore only indirectly to Parliament. They could not be tolerated except in a time of such emergency and stress as that through which we are now passing. LORD KENNET recently wrote in *The Times* that "such an organisation as Regional Commissioners for Civil Defence is no doubt necessary in war time, but as a peace-time organisation of local government is neither necessary nor desirable." The Lord Mayor of Birmingham, writing in *The Times* of 12th October, pointed out that it was the undemocratic character of regionalism which accounts for much of the dissatisfaction with it to-day. Whitehall (he wrote), with Ministerial backing, has done all it could to limit the powers of local authorities and substitute non-elected and often unsuitable persons to override local government. LORD SANDWICH, in *The Times* of 16th October, supported the regional method of local government and wrote that even in war time it had been a success. He recommended that the county should still remain the standard unit, and pointed to anomalies which existed in the relations between the county and the district owing to recent additions to the duties of county councils. One of these was the fact that water supplies are now provided and subsidised by county councils. Tuberculosis also came under the county council, while the cleanliness of cowsheds was a matter for the district. Obviously if planning is to be comprehensively successful, a reorganisation of local authorities is called for. The proposal, however, to strengthen the county as the main unit of local government should prove more acceptable than a vague suggestion of large unspecified areas with at present undefined powers.

Black Market in Australia.

REFERENCE has already been made in these columns to the forthright emergency laws passed in Australia to meet the same contingencies as those provided against in our own Courts (Emergency Powers) Acts and Liabilities Adjustment Act (*ante*, p. 169). From Canberra on 24th September the special correspondent of *The Times* (25th September) writes that Dr. EVATT, the Attorney-General, introduced on that date in the House of Representatives an ingenious Bill to deal with another branch of emergency law, the punishment of black market racketeers. It defines nine specific offences as black marketing, and contains a general clause empowering the Government to extend the definitions by regulation. The maximum penalties proposed in the case of a conviction of an individual are three months on summary conviction and twelve months on indictment. Where companies are convicted, the proposed maximum penalties are £1,000 fine on summary conviction and £10,000 on conviction on indictment. In such transactions all goods involved are to be forfeited to the Crown. The most original provision of the Bill is that which imposes on a trader convicted of a black market offence the obligation of displaying outside his place of business a prominent notice of his conviction, so that any person can see it on entering the premises. The court may, if not satisfied with the prominence with which the notice is displayed, require the offender to print particulars of his offence and conviction on all his business letterheads, and may also require the publication of full details of the offence in

the newspapers and through all the broadcasting stations. Dr. EVATT, in introducing the Bill, characterised the offence of black marketing as an outrage against the standard of decency, and the reintroduction of what amounts to a public pillory no doubt marks the sense of disgust of a large number of Australians at the activities of the racketeers. Part of the punishment for every crime, however, is the publicity which it inevitably attracts, and now that customers are becoming more than ever attached to particular shops, it is uncertain whether a prominent notice would add to their knowledge of the offender's antecedents and thereby provide a sufficient deterrent against future transgressions. It might even attract more undesirable customers to deal secretly with the offender, and so encourage further offences. It is an old but true saying about giving a dog a bad name. When the country is in danger, however, the strongest measures are called for, and the drastic nature of some of the Australian emergency laws is an indication of the extent to which the nation has awakened to its peril.

Conditional Notices of Retention.

THE service of conditional notices of retention under s. 2 of the Landlord and Tenant (War Damage) (Amendment) Act, 1941, is, as FARWELL, J., recently remarked in *In re Tubbs* (*Estates Gazette*, 2nd May, 1942), apt to be a shot in the dark in the case of properties in heavily bombed areas, but on the balance the facility offered by the section is one which most solicitors will probably feel that they cannot ignore. It is clear from the wording of the section that the notice, in order to be effective as a conditional notice, must contain a statement that the notice is conditional and will be treated as a notice of disclaimer if the War Damage Commission determine to make a value payment, and that a copy of the notice must be served on the War Damage Commission within one month of the service thereof on the landlord. The Council of The Law Society, according to the October issue of *The Law Society's Gazette*, having communicated with the Lord Chancellor's Department, are of opinion that if the tenant fails to serve the copy on the War Damage Commission, the notice will take effect as a notice of retention within the Landlord and Tenant (War Damage) Act, 1939, i.e., as an unconditional notice. In other words, the very situation will be produced which the tenant aimed at avoiding by serving the conditional notice. In order to ensure that this fact is not overlooked, the Council have arranged with The Solicitors' Law Stationery Society, Ltd., that the form of the conditional notice of retention published by them shall in future contain a statement that a copy will be served on the Commission within one month and also that the footnote to this form directing attention to the requirements shall be printed in bolder type.

Courts Emergency Powers (No. 2) Rules, 1942.

ON 22nd October the Courts (Emergency Powers) (Amendment) Act, 1942, received the royal assent, and on the same day the Courts (Emergency Powers) (No. 2) Rules, 1942, were made by the Lord Chancellor. They provide that the appropriate court for the giving of leave required by s. 2 of the Courts (Emergency Powers) Act, 1942, for instituting proceedings for the recovery of mortgaged property, shall be the court in which the proceedings are sought to be instituted. An application for leave to institute proceedings for the recovery of possession of mortgaged property is to be by originating summons. A new r. 15c is inserted after r. 15B of the Courts (Emergency Powers) Rules, 1940, as amended by the No. 2 Rules of 1940, the No. 1 Rules of 1941 and the No. 1 Rules of 1942. It provides that the persons to be made respondents to an application under the Courts (Emergency Powers) Acts, 1939 to 1942, by a mortgagee of property for leave to exercise against the property any right or remedy are to be (i) the mortgagor, where he is the owner of the equity of redemption, whether he is under personal liability or not; (ii) the assignee of the equity of redemption, whether under personal liability or not; (iii) the personal representative of the mortgagor or assignee (but the application may be *ex parte* if the mortgagor or his assignee has been dead for more than six months and no personal representative has been constituted); (iv) a trustee in whom the equity of redemption is vested (but the application may be made *ex parte* where a trustee in bankruptcy in whom the equity is vested gives the applicant a written statement, before the application, that he has no objection to the leave sought being given). This list does not necessarily exhaust the number of persons who may have to be made respondents to an application by a mortgagee to exercise a right or remedy against the property. Where any other person would be affected by the exercise of the right or remedy, the applicant must, on applying at the chambers of the judge for an appointment to hear the application, leave at chambers with a copy of the summons a statement giving the name of such person and showing what is his interest in the mortgaged property. The court or a judge may direct that such person, or any person who the court or a judge may think would be affected by the granting of the application, should be added as a respondent. A mortgagee may issue his application *ex parte* if uncertain as to who would be affected, and on applying for an appointment to hear the application leave a list of persons, specifying their interests; and the court or a judge may direct which, if any, of the persons specified are to be made respondents. A new form of notice is provided which must be endorsed on the original summons and the copy served where the court or a judge directs that a person be added as a respondent. All of these persons are now, under the 1942 Act, deemed to be persons liable to pay the mortgage money or to perform the mortgage obligation, and the anomaly in the law which was disclosed by such cases as *In re Hearts of Oak Permanent Building Society's Application* (1942), 1 All E.R. 46, and *In re Leicester Temperance and General Permanent Building Society's Application* (1942), 2 All E.R. 36, is now rectified. These rules, and the County Court (Emergency Powers) (No. 1) Rules, are published at pp. 323, 324 of this issue.

Form D.

A FURTHER amendment of the Defence (Finance) Regulations, 1939, made by S.R. & O., 1942, No. 2096, has simplified considerably the handling of transfers of shares. Form D will not be required to be lodged with Registrars after the 26th October, and, where both the transferor and transferee are residents, its place is taken by two simple declarations, D.1 and D.2. The changes are explained in new "Instructions to Registrars," set out in a Supplement to the *London Gazette* for the 20th instant, and in the Bank of England Notice, F.E.190, of the same date. Two important practical points arise. The first is that all transfers must be accompanied by the new declarations, the former exemptions from the necessity to use Form D being now restricted to cases where shares pass by operation of law without the necessity for any act of transfer. The second is that the new declarations can be made by solicitors, provided, of course, that their knowledge of the facts enables them to do so. Both these changes will be welcomed as a simplification of the procedure. For the full effect of the changes, readers should study the documents mentioned above.

Recent Decisions.

In *In re Taxation of Costs, In re Solicitors*, on 19th October (*The Times*, 20th October), the Court of Appeal (SCOTT, MACKINNON and GODDARD, L.JJ.) held that where a solicitor delivered to a client a lump sum bill of costs, and later, on demand by the client, delivered a detailed bill with items aggregating to a larger sum than the lump sum originally charged, and the latter bill was not reduced on being taken to taxation, the taxed detailed bill took the place of the lump sum bill for all purposes, the detailed bill being an alternative which the client could accept in place of the lump sum bill under the Solicitors Remuneration (Gross Sum) Order, 1934.

In *In re Parsons, deceased; Parsons* v. *Attorney-General*, on 20th October (*The Times*, 21st October), the Court of Appeal (The MASTER OF THE ROLLS, LORD CLAUSON and DU PARCQ, L.J.) held that a husband who had been left a legacy of £10,000 2½ per cent. Consolidated Stock, free of death duty, under his wife's will, but who disclaimed the gift by deed some months after his wife's death, so that it went back into the wife's residuary estate, was "competent to dispose" of the gift within the meaning of s. 5 (2) of the Finance Act, 1894, and s. 14 of the Finance Act, 1914, so that it attracted estate duty on the death of the husband.

In *Leighton's Investment Trust, Ltd.* v. *Cricklewood Property and Investment Trust, Ltd.*, on 21st October (*The Times*, 22nd October), ASQUITH, J., held that the doctrine of frustration did not apply to a building lease of land which was let to the defendants on the terms that they should erect a number of shops thereon, in spite of the fact that its ulterior object might be that of a commercial adventure, as a lease created an interest in land, which was not subject to frustration.

In *Hollington* v. *Hewthorn & Co., Ltd.*, on 22nd October, HILBERY, J., held (i) that a conviction in a court of petty sessions for driving without due care and attention was inadmissible in a civil action based on negligence alleged against the convicted person as having taken place at the same time as the accident on which the conviction was based; and (ii) that a statement given to the police by a person since deceased, whose injuries formed the basis of the claim for damages in an action on behalf of his estate, was not admissible as evidence in that action under s. 1 of the Evidence Act, 1938, because where a collision occurs on the road between two vehicles causing injuries to persons and vehicles, every citizen must be taken to know that the police will consider statements for the purpose of proceedings, and therefore the statement was "made by a person interested at a time when proceedings were . . . anticipated involving a dispute as to any fact which the statement might tend to establish," within s. 1 (3) of the Act.

In *J. H. Rayner & Co., Ltd., and Others* v. *Hambros Bank, Ltd.*, on 23rd October (*The Times*, 24th October), the Court of Appeal (MACKINNON and GODDARD, L.JJ.) held that the defendant bank was not bound or entitled to honour a letter of credit for payment of Coromandel groundnuts in bags where the goods were shipped, and described in the bill of lading as "machine shelled groundnut kernels." The defendants had been unable to communicate with their principals owing to the invasion of Denmark in 1940. (See *per* Bailhache, J., in *English, etc., Bank* v. *Bank of South Africa*, 13 Ll. L. Rep. 52.)

Procedure in 1942.

(*Continued from p. 305.*)

Serving Soldier and Stay of Proceedings.

Where a defendant is a serving soldier, the trial of an action cannot be held over indefinitely until the defendant and his witnesses have returned within the jurisdiction. Such a delay would prejudice the plaintiff, perhaps permanently (*Coppin* v. *Bush* (1942), 1 All E.R. 518).

C sued B, an Army driver, for damages for personal injuries caused by a collision in April, 1939. The writ had been issued within six months of the accident and the Treasury Solicitor ultimately entered an appearance on behalf of the defendant. B and his witness had been out of the country since 1941 and the master and Asquith, J., ordered the action to stand over until their return. C was willing that statements made by B and his witness should be treated as sworn depositions, subject to C's right to comment.

The Court of Appeal ordered that the action proceed to trial. Otherwise, said Lord Clauson, there would be " danger of grave injustice to the plaintiffs." All sorts of things might happen to the plaintiffs and to their witnesses. On the footing of the plaintiffs' undertaking to admit the statements made by the defendant and his witness, the defendant would suffer no " substantial injustice " (at p. 519).

From October, 1939, until March, 1940, said Goddard, L.J., the plaintiffs were trying to get Southern Command to do something. All they did was to say that on the evidence before them the Army driver was not to blame. In March, 1940, the plaintiffs wrote that unless something was done a question would be asked in the House. At last the papers went to the Treasury Solicitor. He first took the point that the claim was barred by the Public Authorities Protection Act, 1893. After many months he then agreed to accept service. " It would be a grave injustice to the plaintiffs if this action was to be held up indefinitely " (at p. 521).

Incompetent Proceedings.

" A court is not only entitled but bound to put an end to proceedings if at any stage and by any means it becomes manifest that they are incompetent. It can do so on its own initiative, even though the parties have consented to the irregularity . . . " (*Westminster Bank, Ltd.* v. *Edwards* (1942), 1 All E.R. 470 (H.L.), *per* Lord Wright, at p. 474).

An application by persons in the position of lessors was made to the county court under Landlord and Tenant (War Damage) Act, 1939, s. 15, for the court to determine whether, the property having been damaged by enemy action, it was equitable to allow the head lessees to disclaim a lease wholly, or in respect of one or more of the tenements. The parties agreed that the lease was a multiple lease under s. 24. The county court judge, His Honour Judge Engelbach, at the parties' request, inspected the premises and found that the lease was a multiple lease and so stated in his judgment. The main question in dispute was which portion of the premises should the court permit to be disclaimed. Upon appeal by the head lessee against a decision in favour of the lessor, the Court of Appeal itself took the objection that the lease was not a multiple lease and did not therefore come within s. 15. The state of the premises when the lease was granted, not their state when the war damage took place, was material. That court allowed the appeal and directed that the application under s. 15 be dismissed as incompetent (*Hazel* v. *Edwards* (1941), 2 All E.R. 591 (MacKinnon, Goddard and du Parcq, L.JJ.)).

The House of Lords held that the proceedings were not incompetent and that there was no want of jurisdiction. Whether a lease is a " multiple lease " is a question of fact which depends upon the evidence (*per* Uthwatt, J., in *Herrmann* v. *Metropolitan Leather Co., Ltd.* (1942), 1 All E.R. 294). There was no evidence before the Court of Appeal upon which it could find that this was not a multiple lease. Nor was that question in issue. There are cases in which the court should itself take an objection, even though the point is not taken by a party. Thus, if there is " collusion or the abuse of process," said Viscount Simon, L.C. (at p. 473). Thus also, where want of jurisdiction is " apparent on the face of the proceedings," e.g., if no right of appeal exists. Compare also *Benson* v. *Northern Ireland Road Transport Board* (1942), 1 All E.R. 465, where the House of Lords took the point that no appeal lay from the dismissal of a criminal charge.

The House, accordingly, to save expense, and in " the interests of justice and the proper dispatch of business "—but not to be taken as a precedent—dealt with the issues itself instead of remitting them to the Court of Appeal.

Lord Wright said that the Court of Appeal could not justify their decision " without a complete reconstruction of the facts and evidence "—which was not within their competence. " There was no object of jurisdiction apparent on the face of the proceedings " (at p. 670). An objection to want of jurisdiction cannot be taken unless it is " patent or apparent on the face of the record " (at p. 475).

(*To be continued.*)

Criminal Law and Practice.

Suspected Persons.

NEW problems and new aspects of the problems under s. 4 of the Vagrancy Act, 1824, frequently arise for the consideration of the courts. It is, as is well known, a lengthy section which enumerates the various classes of " rogue and vagabond." Among these is " every suspected person . . . frequenting or loitering about or in . . . any street or highway, . . . with intent to commit a felony."

The most recent of the reported decisions is that of *Cohen and Another* v. *Black* (23rd April, 1942), 86 SOL. J. 210, which came before the Divisional Court by way of a case stated by the Deputy Chairman for the County of London Sessions. The appellants had been charged at petty sessions that they " being suspected persons did loiter about certain streets . . . with intent to commit a felony, contrary to the Vagrancy Act, 1824, s. 4." They were convicted, and an appeal to quarter sessions was dismissed.

On 27th and 28th March, the appellant Cohen had been trying to sell to one Collins some shirting. Collins suspected the shirting to be stolen goods, had reported the matter to the police, and three policemen were assigned to watch further transactions. On 29th March the three policemen kept watch and saw and heard what followed. The two appellants Cohen and Cole, with another person called Flint, who was convicted with them but did not appeal, got out of a Ford motor van outside Collins' shop. Flint said : " Get him out to the van with the money." Cohen then went into Collins' shop and both Cohen and Collins left the shop a little later, Collins carrying some £300 to £400 in notes on his person. At the same time Cole, who had been standing a little distance away, walked to the van and spoke to Flint, who handed Cole a box spanner with a flex attached to it. Cole then jumped into the back of the van and put himself behind the curtain in the van. Cohen and Collins then drove off in a motor car and came back later. They went to the shop and on coming out Cohen joined Cole and Flint in the van, and Cohen was heard by a policeman to say " I have tried to get him out of the shop with £200." Cole replied " See what pocket he puts the poke in." Cohen was heard to say " I have got to be careful with him, but I think he will fall for it." All three men then got into the van and it drove off. It later pulled up near Collins' shop, and Cohen left the van, went into the shop, came out and drove off again. Some distance away the van slowed down and Cohen alighted. It was then that the police arrested Cohen, Cole and Flint.

Charles, J., quoted from the judgment of Greer, L.J., in *Ledwith* v. *Roberts* [1937] 1 K.B. 232 : " In my judgment the powers of a constable to arrest without warrant are confined to cases in which he finds frequenting or loitering, etc., a person who has, by his previous conduct, become a suspected person." He also adopted a quotation from the judgment of Avory, J., in *Hartley* v. *Ellnor* (1917), 86 L.J.K.B. 938 : " But we are clearly of opinion that in the present case there was ample evidence before the justices to show that the respondent was in fact a suspected person, and also that there was ample evidence to render it possible for the inference to be properly drawn that the respondent was frequenting Martineau Street on the day in question with the intent of committing a felony."

Lewis, J., quoted from the judgment of Lord Hewart, L.C.J., in *Rawlins* v. *Smith* [1938] 1 K.B. 675, at p. 685 : " He may not be put into the category of suspected persons solely by the act that causes him upon arrest to be charged with loitering as a suspected person with intent to commit a felony." Oliver, J., agreed that the appeal must be dismissed. He held that the principles applicable to the case were " laid down clearly upon the authority of that master of the criminal law, Avory, J." in *Hartley* v. *Ellnor*. These were : (1) that there must be some antecedent evidence which brings the person charged with loitering into the category of being a suspected person, not merely because some policeman, seeing him loitering, thinks he is loitering with intent ; (2) the antecedent conduct need not be on an antecedent day but may be on the same day. In that case two police officers watched the person charged during forty minutes while they tapped the pockets of persons getting on and off public vehicles, and it was held that there was abundant evidence that he was a suspected person.

Ledwith v. *Roberts* [1937] 1 K.B. 232, said Oliver, J., was decided on entirely different facts, in which there was no evidence of antecedent transactions on which a suspicion could be based. It was true that Greene, L.J., and Scott, L.J., had in that case disagreed with the decision in *Hartley* v. *Ellnor*, but Oliver, J., could not understand why it was thought necessary to introduce those *obiter* expressions of disagreement. It was on the footing that *Hartley* v. *Ellnor* was wrongly decided that the magistrates in *Rawlins* v. *Smith* held, where there had been a watching and a series of acts, whatever they were, extending over one hour and twenty minutes, that there was no evidence of an offence against s. 4. Lord Hewart, C.J., Branson, J., and Porter, J., all emphasised that *Hartley* v. *Ellnor* had not been overruled by the *obiter* remarks in *Ledwith* v. *Roberts*.

What, then, it may be asked, was the precise value of the Court of Appeal decision in *Ledwith* v. *Roberts* in relation to s. 4

of the Vagrancy Act, 1824? It was an action for damages for false imprisonment in which the plaintiffs succeeded. An appeal was dismissed, and Greer, L.J., held that *Hartley* v. *Ellnor* "was plainly right," and in any case did not assist the appellants. Greene, L.J., pointed out that it was pleaded in defence, not that either of the respondents was a "suspected person," but that as a result of certain observations "each of the appellants had reasonable and probable cause for suspecting and did, in fact, suspect that the respondents had been attempting and were about to commit a felony." The reasoning of Avory, J., in *Hartley* v. *Ellnor*, with which Greene, L.J., disagreed, was contained in a passage, quoted by Greene, L.J., in which Avory, J., asked: "By whom must he have been suspected?" with reference to an argument that the person accused must have been suspected on some day before the loitering. However, in both the judgment of Greene, L.J., and of Scott, L.J., *Hartley* v. *Ellnor* was distinguished. Scott, L.J., pointed out that it established that the person in question must have already become a suspected person. Scott, L.J., merely thought it wrongly decided on the facts.

Clearly, then, there is no real conflict of law, but only an *obiter* expression of opinion on the facts of the cases, and the great importance of *Ledwith* v. *Roberts* still remains for it establishes that mere honest suspicion by a police constable on what he believes to be reasonable grounds that a person is loitering with intent to commit a felony is not enough to bring the latter within s. 4 of the Vagrancy Act, 1824.

A Conveyancer's Diary.

Re Lindop. III.

My article a fortnight ago which dealt with wills providing against the inconveniences of s. 184 of the Law of Property Act, 1925, has brought a larger post-bag than any of its predecessors. It is clear that I there made a statement which was positively wrong and that it influenced certain other parts of the article. I now propose to set out the correct view, and I take this opportunity of thanking those who have pointed out the error. A regular column of this sort necessarily relies much on the goodwill and the suggestions of its readers if it is to deal accurately with matters of current interest, particularly now that enactments change almost overnight.

The point which I had overlooked was in regard to death duties. It was not the main point dealt with in the article, since I was most concerned with the *destination* of property where parents and infant children perish in the same catastrophe. On that matter there is nothing to alter. But I observed in passing that unless something was done to prevent it, the ordinary will of the father of the family would pass his estate for an instant of time to the mother, then to the eldest child, and finally to the younger child, attracting a fresh lot of estate duty on each occasion. This observation overlooked two quite distinct sets of enactments: first, the ordinary provisions for the relief of the estate of the survivor of two spouses; second, the recent enactments granting relief on civilian deaths in war. As only one of my correspondents seems to have appreciated that there are both those points, it may be as well to explain both in full.

The scheme of the Finance Act, 1894, which created the modern estate duty, was that, where property became subject to a settlement on the death of the deceased, an extra duty, called settlement estate duty, should be paid at once, but that no estate duty should be leviable on subsequent deaths until the death of a person who was at the time of his death, or had been at any time during the continuance of the settlement, competent to dispose of the property (s. 5). By the Finance Act, 1914, s. 14, it was provided, however, that any such relief from estate duty should cease, and no further settlement estate duty should be levied. There were provisions for repayment of settlement estate duty which had been paid under the old system as the price of immunity from estate duty while the settlement lasted. But there was the single exception, s. 14 (*a*), that s. 14 should not affect any relief from estate duty as aforesaid where estate duty has been paid on the death of one party to a marriage "so far as respects the payment of estate duty on the death of the other party to the marriage." The effect of s. 14 (*a*) of the 1914 Act is to preserve the relief from estate duty conferred by s. 5 of the 1894 Act so far as the second spouse is concerned. It does not do anything else. Thus it is no help to the surviving spouse if the estate of the first spouse is devised to him or her *absolutely*; the surviving spouse is not relieved unless there has been no one "competent to dispose" of the property, since estate duty was leviable even under the 1894 Act on the death of one who was "competent to dispose." As may be imagined, there are various cases on the meaning of this phrase, but there can be no doubt that where a man leaves his estate to his wife for life, remainder to his children as tenants in common (which was the case instanced in my former article) the estate is free of estate duty on the death of the wife. There would be no such concession on the death of the wife if the husband had left her his estate outright; equally, there would be no concession at all on the deaths of the children. So far, therefore, the position is that to save estate duty it would be necessary to attach a condition of survivorship by (say) thirty days to all *absolute* gifts, but that that is not necessary on the gift of a life interest to a wife or husband.

We now come to the special concessions for deaths in war. They are comprised in a most shocking collection of pieces of legislation by reference, which I shall seek to summarise. By s. 14 of the Finance Act, 1900, certain provisions were made for deaths since 11th October, 1899, on which day an ultimatum had been delivered to the South African Republic. If the death was of a person subject to the Naval Discipline Act or to military law, *and* was as the result of wounds or disease inflicted or contracted while the deceased was on active service against an enemy, *and* if the property passing to the widow or lineal descendants did not exceed £5,000 the Treasury were allowed to remit or repay death duties on property passing to the widow or lineal descendants up to the maximum of £150. This provision was evidently thought not to be quite generous enough in 1914, and on 31st August in that year Parliament enacted the Death Duties (Killed in War) Act, 1914. This Act did three things: (1) It extended the benefits of the 1900 Act to lineal ancestors; (2) it remitted altogether all death duties on estates of under £5,000 passing to the persons so benefited, and all death duties on the first £5,000 so passing if the estate was larger; (3) for estates over £5,000 it remitted the amount by which the death duties actually chargeable exceeded the amount which if invested at compound interest for the balance of the deceased's normal expectation of life would have amounted to the quantum actually chargeable at the end of such period. In other words, it treated the duties paid as if they were a prepayment, actuarially discounted, by the deceased in his lifetime. The foregoing matters were comprised in s. 1 of the Act. By s. 2 the Act exempted property from death duties altogether if it had once fallen under s. 1, and then there was a further death of the sort to which s. 1 applied. It will be observed, however, that the deaths in question were, and remained throughout that war, those of sailors or soldiers (or, later, airmen). These provisions were extended to a variety of persons who were likely to be killed in the then "troubles" in Ireland by the Finance Act, 1921. Finally, s. 38 of the Finance Act, 1924, put matters on a more permanent basis. It provided that the benefits of the Finance Act, 1900, as later amended, *except* as amended by s. 2 of the 1914 Act, were to apply to any persons under naval, military or air force discipline "who die from wounds inflicted, accidents occurring, or disease contracted while on active service against an enemy or on service which is of a war-like nature, or which in the opinion of the Treasury otherwise involves the same risks as active service." The position under the Finance Act, 1924, was thus, that there was entire relief from death duties on the first £5,000 passing to ancestors, spouses or descendants, and some slight relief on larger sums so passing, if the death in question was that of a soldier, sailor or airman on active or really dangerous service. The relief on a second or later death applied only where s. 2 of the 1914 Act applied, viz., where the persons concerned died on active service against an enemy.

The Finance Act, 1940, s. 64 did the following things: it amended s. 38 of the 1924 Act by bringing in masters and men of the Merchant Navy and pilots as if they were in the Royal Navy. It further enacted a new provision (subs. (2)) which in effect applied s. 2 of the 1914 Act to everyone within the 1924 Act as amended by the 1940 Act. Finally, it seems to have been felt that the events of 1940 and early 1941 had put civilians in a position of risk comparable to those of persons on active service, and Finance Act, 1941, s. 46, enacted that s. 38 of the 1924 Act, as amended by the 1940 Act, should apply to the death of "any person" after 3rd September, 1939, from injuries received by him "being injuries caused by the operations of war." There were consequential provisions as to gender, because, apparently, no one had previously contemplated female casualties. The Finance Act, 1941, covers a smaller field than the earlier Acts, as the civilian who dies from accident or disease gets no relief.

I have thought it well to go through this jungle of legislation, which I forgot when I wrote my last article and had never before fully understood, as I hope the above review may help readers to thread their way through it in practice. The whole scheme is based on the 1900 Act. It does not benefit anyone on the *first* war death except in respect of property passing to a widow or widower, ancestor or descendant. On the *first* war death, the relief is comparatively limited. I use "war death" to mean a death which qualifies a soldier, sailor or airman under the 1924 Act, a merchant seaman under the 1940 Act, or anyone under the 1941 Act. If a piece of property attracts duty on a second or later war death since 3rd September, 1939, there is a complete remission of death duties. It should be noted that the duties above discussed are legacy duty and succession duty as well as estate duty.

As a result of all those enactments I agree that one need not worry unduly about the death duty aspect of the passing of property where several deaths occur in the same disaster. The substantial point is, however, that, duty or no duty, the property will end up in quite unexpected hands unless one does something to make the absolute interests contingent on substantial survivorship. My proposed form should, however, be modified by making

the wife's life estate absolute, since in that case the condition of substantial survivorship was directed only to the duty point, and is unnecessary.

One correspondent thinks my form may be bad for perpetuity, but does not say why. I am afraid that I cannot see how that can be: no interest vests later than that of issue of a child dying without taking a vested interest, and the interest of such issue vests a month after the death of the survivor of the child and the testator, who are both lives in being.

Landlord and Tenant Notebook.

Negligence in effecting Repairs.—II.

In last week's "Notebook" I mooted the question whether *Malone* v. *Laskey* [1907] 2 K.B. 141 (C.A.)—in which it was held that a landlord who voluntarily undertook repairs in a house occupied by a sub-tenant, and who employed apparently competent men for the purpose, was not liable for injuries consequently occasioned to the sub-tenant's wife—was still law. After discussing a number of authorities, I suggested that it might be useful to examine *Bottomley* v. *Bannister* [1932] 1 K.B. 458 (C.A.) and *Haseldine* v. *Daw* [1941] 2 K.B. 343 (C.A.) side by side.

In *Bottomley* v. *Bannister* a claim was brought under Lord Campbell's Act against a firm of builders. The deceased had purchased a house built by them under a contract entitling him to occupy it as tenant at will pending completion. The house contained a gas boiler which had no flue, but which was connected with the bathroom by a pipe and linen chute. The purchaser and his family entered into occupation, under the contract mentioned, and a few days later an inspector employed by the local gas undertaking regulated the burner by adjusting a needle. A few days before the date fixed for completion the purchaser-tenant and his wife were found dead, their deaths being due to carbon monoxide emanating from the apparatus. It was found that the angle of the needle had been altered and while the question was never put to the jury, the Court of Appeal assumed that the alteration was effected by the tenant or his wife. What the jury did find was that the apparatus was, as installed by the defendants, used without a flue in connection with the chute, dangerous, and that they ought to have known that it was. Hawke, J., gave judgment in favour of the plaintiffs.

In support of the judgment it was argued that the defendants incurred a liability in tort in their character as builders: if they had left some explosive or a quantity of corrosive acid in the house they would be liable for the misfeasance, contract of tenancy or no contract of tenancy.

The Court of Appeal held that the evidence in fact showed that the apparatus was not dangerous; and they deplored the fact that no question of negligence, nor any of contributory negligence, had been raised. But it is their lordships' examination of the possibilities which is of interest.

Scrutton, L.J., pointed out that the boiler, burner and linen chute were parts of the realty, and it was well established that the defendants could not therefore be liable as landlords. As regards the claim in tort, even if the apparatus were dangerous, "the boiler was regulated by the gas company's inspector, for whom the defendants were not liable." And, later, "the defendants knew that before the gas company will supply gas they, being competent people, will test and regulate the chattel so as to render it not dangerous." Greer, L.J., observed that it was not easy to reconcile all the decisions on the liability of vendors of dangerous articles, but none went as far as was necessary for the plaintiffs' purpose. Romer, L.J., was content to point out, when dealing with this possibility, that the jury had not found that the presence of carbon monoxide in the bathroom was due to the use of the apparatus as installed by the defendants. This, I think, is another way of putting Scrutton, L.J.'s point about the competence of the actual operators.

Before passing on to *Haseldine* v. *Daw*, I would mention that though the House of Lords had delivered its opinions in *Donoghue* v. *Stevenson* some two months before *Bottomley* v. *Bannister* was heard by the Court of Appeal, the snail in ginger beer bottle case was not cited either in argument or in any of the judgments.

The facts of *Haseldine* v. *Daw* were that the landlord of a block of flats made a contract with a firm of engineers for the periodical maintenance of a lift in the building. In November, 1939, they told him its rams were badly worn, and suggested extra visits to grease them more often. He agreed. No suggestion was made that the lift was dangerous. Safety was the concern of an insurance company, who made periodical inspections, and in April, 1940, they reported all well. On 18th June an employee of the engineers negligently failed to repack a gland, and the consequence was that on the following day the plaintiff, a solicitor's managing clerk, calling professionally on one of the tenants, was seriously injured owing to the lift falling. He sued the landlord and the engineers. Hilbery, J., held that the landlord was not liable as such, the plaintiff being his invitee; but that he was liable as owner and occupier of the lift, the lift being a vehicle. And that the engineers were liable because they had repaired an article dangerous unless repaired with skill and care, no examination before its use by the plaintiff being anticipated.

The Court of Appeal held that whether the plaintiff was invitee or licensee, the landlord was absolved by reason of his having employed a competent firm of engineers to inspect, adjust and report regularly. By a majority, it was held that the engineers were liable on the principle of *Donoghue* v. *Stevenson*.

The landlord, said Scott, L.J., "was ignorant of the mechanics of his hydraulic lifts and it was his duty to choose a good expert, to trust him, and then to be guided by his advice." And Goddard, L.J., said it made no difference that the contract did not extend to repairs and renewals; in either case it was the engineers' duty to report danger.

The majority opinion on the other point was based on Lord Buckmaster's words in his speech in *Donoghue* v. *Stevenson*, where he spoke of "the manufacturer, or indeed *the repairer*, of any article" owing a duty to any person by whom the article is lawfully used. Clauson, L.J., dissented on the ground that the plaintiff had not established any such relationship as gave rise to a duty upon the engineers towards him.

Malone v. *Laskey*, *Bottomley* v. *Bannister* and *Haseldine* v. *Daw* differ in many respects as regards the nature of the issues fought; but they warrant at least one proposition, namely, that if a landlord is liable to repair and that liability sounds in tort, he satisfies it if he chooses competent workpeople and is not responsible for their unsuspected negligence (cf. *The "Jersey"* (1942), 86 Sol. J. 313). The two later cases do nothing to negative this part of the earlier one, in fact they confirm it. But *Haseldine* v. *Daw*, when it applies *Donoghue* v. *Stevenson*, at least explores a possibility hardly considered in the earlier case: that of making a repairer liable to persons who may be expected to use the repaired article. Lastly, it is perhaps worthy of comment that in *Haseldine* v. *Daw* the lift was consistently described as an article, and one wonders whether if its status as a chattel had been argued and negatived, there would have been a different result. Had the action been between landlord and tenant, the status would, as *Bottomley* v. *Bannister* shows, have been decisive, and I see no reason to suppose that even *Donoghue* v. *Stevenson* can modify this.

Our County Court Letter.

Eviction of Furniture.

In a case at Lichfield County Court (*Godfrey* v. *Guest and Another*) the claim was for £50 as damages for trespass. The plaintiff's case was that, having been bombed out of Margate, he had evacuated his wife and children to Hammerwich. They lived there as lodgers in a house owned by the sister of the second defendant, whose tenant was a Mrs. Michael. The latter gave notice to leave on the 1st September, 1941, whereupon the plaintiff asked to be accepted as tenant of the house. This request was refused, but, in consideration of £20 paid by the plaintiff to the defendants' solicitor on the 5th September, it was agreed that the plaintiff should be allowed to remain in possession from the 1st September for a period not exceeding six months. A receipt was issued embodying these terms. The plaintiff accordingly left some of his furniture in the house, and went to Margate to fetch the remainder. On his return, viz., on the 18th September, the plaintiff found two notices on the house as follows: "Any person entering these premises without permission of the owner or agent will be liable to prosecution"; and: "No furniture to be deposited on these premises, by order of the owner." It was found that the plaintiff's furniture had been removed, and piled up in the coalhouse and garden, under some sheeting. The doors had been padlocked and the windows screwed up. No evidence was called for the defendants, whose case was that they had acted under the advice of their solicitor. Any breach of the law was therefore innocent, and any damages should be nominal. His Honour Judge Finnemore observed that the agreement tried to evade the Rent Acts by permitting the plaintiff to stay in the house, and pay a weekly rent without setting up a tenancy. Having paid £20, the plaintiff had an absolute right to possession of the house for six months. Judgment was given for the plaintiff for £30, with costs.

Warranty of Cattle.

In a case at Lincoln County Court (*Cox* v. *Sharpley*) the claim was for £205 13s. as the price of cattle sold, and the counter-claim was for £115 1s. 6d. as the price of sheep sold. The plaintiff's case was that he and the defendant were both farmers, and in May, 1939, he supplied stock to the defendant. Part of the amount claimed was admitted, but the defendant contended that four cows were bought by him in reliance on a warranty that they were in calf. As the cows were not in that condition, a reduction in price was claimed. On the counter-claim, the defendant contended that thirty-eight sheep had been sold by him at 52s. per head. The plaintiff's defence to the counter-claim was that the agreed price was 42s. 6d. per head. His Honour Judge Langman held that no evidence had been adduced that a warranty was given concerning the cattle, and judgment was given for the plaintiff on the claim. The plaintiff's version of the transaction of the sheep was accepted, and judgment was given in his favour on the counter-claim, with costs.

To-day and Yesterday.

LEGAL CALENDAR.

26 October.—Roger North in his autobiography recorded that on the 26th October, 1682, he received "the first patent to be of the King's Council." Then and till 1914 King's Counsel were appointed by letters patent under the Great Seal. As in the case of the judges, the appointment used to lapse on the King's death, and a couple of years later North recorded that he had received his second patent under James II.

27 October.—Lord Wrenbury died at the age of ninety on the 27th October, 1935. He had been a figure in the legal world since 1872, when as Henry Buckley, three years called to the Bar, he published his classic treatise on the Companies Acts, the book which first brought him business, then professional fame, and eventually led to his appointment to the Bench. His style of advocacy suited the sort of practice which came to him and he won a commanding place as an equity leader in a period when the Chancery Division was being called on to decide fundamental points of company law. He became a judge in 1900 and at once distinguished himself by the promptitude and clarity of his decisions. In 1906 he was promoted to the Court of Appeal, and when he retired in 1915 he received a peerage.

28 October.—Thomas Savage, the seventeen-year-old apprentice of Mr. Collins, a vintner, who kept the Ship Tavern at Ratcliff Cross, the centre of London's seafaring quarter, fell in with Hannah Blay, one of the young women of Ratcliff Highway who preyed on the sailors. She kept urging him to rob his master and run away abroad with her, and when he replied that he could not, because the maid was always at home, she replied "Hang her, the jade! Knock her brains out!" The maid unfortunately helped to seal her own doom, for one day when he came in late she said: "Oh sirrah, you have been now at the bawdy house; you will never leave it till you are utterly ruined thereby." This angered him and he resolved to kill her; so next time the family were at church he despatched her with a hammer and fled with £60 from his master's cupboard. He went through Greenwich to Woolwich, where he was found asleep in an alehouse with his head on the table and a pot of beer before him. He admitted his crime and, being tried and condemned to death, was taken to Ratcliff Cross for execution. His tears and pious ejaculations drew tears from the spectators, and when, after the cart had been driven away, he struggled on the rope, a young friend struck him several times on the chest to put him out of his agony. When the body was cut down his friends carried it off to a house nearby, where to their surprise he began to revive. However, while they were bringing him to, the sheriff's officers arrived and took him back to the place of execution. This time he was really despatched and buried at Islington on the 28th October, 1668.

29 October.—James Boswell, Dr. Johnson's biographer, was born at Edinburgh on the 29th October, 1740. His father, Alexander Boswell, became Lord Auchinleck and a judge. He himself was admitted as an advocate in Scotland in 1766 and in the following winter he earned sixty-five guineas. In 1786 he was called to the English Bar by the Inner Temple, and joined the Northern Circuit, of which he became the junior for a time. From 1788 to 1790 he was Recorder of Carlisle. Amid his travels, his dissipations and his indefatigable social activities he never took his legal career very seriously, and his real monument is one supreme literary production.

30 October.—On the 30th October, 1941, Mr. Justice Hawke was found dead in his room at the judge's lodging at Chelmsford, where he had opened the Assizes on the previous day. He prided himself on never having been absent from his judicial duties for a single day, and he died at his post. Tall, handsome and athletic, he had enjoyed good health all his life. His outstanding characteristic on the Bench was his patience and goodness of heart.

31 October.—On the 31st October, 1940, Lord Hewart, lately resigned from the office of Lord Chief Justice, took a step up in the peerage and became a Viscount. He had presided over the King's Bench Division since 1922. In changing times he had wielded great influence and not the least of his services was his stand against the encroachments of bureaucracy—the new despotism as he foresaw it would become.

1 November.—On the 1st November, 1788, there was tried before Lord Kenyon, C.J., and a special jury "an indictment against Joseph Mitton, a soldier belonging to the Bank picket for the assault on Mr. Crespigny, son of the member of Parliament of that name. The indictment charged the defendant with intent to murder and also with common assault. After Lord Kenyon had summed up the evidence with his usual accuracy, the jury pronounced their verdict, Not Guilty upon the count charging the defendant with intent to kill but Guilty upon the count for a common assault." The trial arose out of an incident while the Bank of England guard was marching through the City, Mr. Crespigny not having stepped aside quickly enough, Mitton had stabbed him through the cheekbone with his bayonet.

Review.

Montgomery's War Damage (Amendment) Act, 1942. By R. M. Montgomery, K.C. 1942. pp. xxv and 52 (with Index). London: Eyre & Spottiswoode (Publishers), Ltd. 5s. net.

Since the publication of the main work, the amending Act has been passed, and the War Damage Commission have published their Practice Notes (First Series). These deal with the answers to many questions as viewed by the Commission, and, although of no legal or binding effect, are of great practical value. Most of the alterations made by the amending Act are retrospective, and this circumstance alone entitles the present handy volume to be included in the list of books which are indispensable to the various professional advisers of owners of property.

Obituary.

Mr. ST. JOHN HUTCHINSON, K.C.

Mr. St. John Hutchinson, K.C., Recorder of Hastings since 1930, died on Saturday, 24th October, aged fifty-eight. An appreciation appears at p. 315 of this issue.

Mr. L. A. BLACKMORE.

Mr. Louis Augustine Blackmore, solicitor, of Ilfracombe, died on Thursday, 15th October. He was admitted in 1903.

Mr. W. HODGE.

Mr. Wilmot Hodge, retired solicitor, formerly partner in the firm of Messrs. W. & R. Hodge & Halsall, solicitors, of Southport, died on Friday, 9th October, aged seventy-four. He was admitted in 1889.

War Legislation.

Statutory Rules and Orders, 1942.

No. 2055. **Air Force.** Discipline and Regulation. Rules of Procedure (Air Force) (Amendment) Rules, Oct. 2.

E.P. 2124. **Apparel and Textiles.** Cloth (Making-up and Use) (No. 8) Directions, Oct. 13.

E.P. 2122. Apparel and Textiles. Footwear (Rubber and Industrial) (No. 2) Directions, Oct. 14.

E.P. 2089. **Control of Fuel** (No. 2) Order, Oct. 15.

E.P. 2115. Control of Paper (No. 52) Order, Oct. 10.

E.P. 2128. Control of Paper (No. 53) Order, Oct. 15.

E.P. 2131. Control of Paper (No. 54) Order, Oct. 15.

E.P. 2108. **Consumer Rationing** (No. 8) Order, 1941, General Licence, Oct. 9, *re* Milking Smocks.

No. 2163/L.32. **Courts (Emergency Powers), England** (No. 2) Rules, Oct. 22.

No. 2164/L.33. Courts (Emergency Powers), England. County Court (Emergency Powers) (No. 1) Rules, Oct. 22.

No. 2101. **Customs.** Export of Goods (Control) (No. 40) Order, Oct. 12.

E.P. 2094. **Defence** (General) Regulations, 1939. Order in Council Oct. 14, amending regs. 18, 47A, 53, 60 and 78.

E.P. 2097. Defence (Merchant Navy Reserve Pool) Regulations (Isle of Man), 1942. Order in Council, Oct. 14.

E.P. 2098. Defence Regulations (Merchant Navy Reserve Pool) Enforcement Order in Council, Oct. 14.

No. 2100/S.53. **Fire Services** (Emergency Provisions). National Fire, Service, Scotland. Direction, Oct. 15.

E.P. 2132. **Food Control Committees** (Constitution) Order, 1942. Amendment Order, Oct. 16.

E.P. 2135. Food (Points Rationing) (No. 2) Order, 1942. Amendment Order, Oct. 16.

No. 2113. **Goods and Services** (Price Control). Toys (Maximum Prices and Records) Order, Oct. 12.

E.P. 2149. **Limitation of Supplies** (Misc.) (No. 16) Order, 1942. General Licence, Oct. 16, *re* supply of certain goods to privileged consumers.

E.P. 2137. Limitation of Supplies (Misc.) (No. 16) Order, 1942. General Licence and Direction, Oct. 15, *re* supply of Toys and Indoor Games.

E.P. 2107. **Making of Civilian Clothing** (Restrictions) (No. 15) Order, Oct. 12.

E.P. 2117. **Navigation Order No. 18,** Oct. 12.

E.P. 2134. **Rationing** (Personal Points) Order, 1942. Amendment Order, Oct. 16.

E.P. 2075. **Reconditioned Service Clothing Order,** Oct. 13.

No. 2150. **Road Traffic and Vehicles.** Motor Vehicles (Authorisation of Special Types) (No. 5) Order, Oct. 14.

E.P. 2118. **Soft Drinks** (Marking of Containers) Order, Oct. 13.

E.P. 2133. Soft Drinks (Returnable Containers) Order, Oct. 16.

No. 2104. **Trading with the Enemy.** Patents, Designs and Trade Marks. General Licence, Oct. 10, as to Fees.

Treasury.

Defence Regulations as amended up to and including Sept. 17, 1942. Vol. 1. 12th Edition. 5s. (5s. 4d.)

Notes of Cases.

COURT OF APPEAL.

Ex parte **Lannoy.**

Lord Greene, M.R., MacKinnon and Goddard, L.JJ. 9th July, 1942.

Alien—Detention on high seas—Brought against will to United Kingdom port—Detained on ground of refusal of leave to land—No request or desire to land—Legality of detention—Aliens Order, 1920, *arts.* 3 (4), 5A.

Appeal from a decision of a Divisional Court (86 SOL. J. 133; 58 T.L.R. 207).

The applicant, a Belgian subject, was in November, 1941, on a Portuguese vessel *en route* for the Belgian Congo, when the vessel was stopped by a British destroyer and he was taken off and landed at Sierra Leone. From there he was taken, against his will, aboard a Dutch vessel and brought to Avonmouth, where he arrived in December. He was seen on the vessel by the immigration officer, who informed him that he would be refused leave to land, and that he would be removed from the ship in custody. He was then given a "refusal slip," although he neither desired nor had asked to land, and was taken by a constable to Bristol prison, being later removed to Brixton prison. On the 13th March, 1942, the Home Secretary made an order under art. 5A of the Aliens Order, 1920, for the applicant's detention on the ground that the Minister was satisfied that the detention was necessary for securing the defence of the realm. As it was not disputed that the applicant's detention under that order was legal, the only question now argued was the legality of his detention from the 21st December, 1941, to the 13th March, 1942, on which question depended that of the costs of the present application. By art. 3 (4) of the Order of 1920, "Where leave to land is refused to an alien, the alien may either (*a*) with the leave of the immigration officer be placed temporarily on shore and detained at some place approved by the Secretary of State, or (*b*) be removed from the ship by . . . the directions of an immigration officer and so detained." The Divisional Court (Humphreys and Singleton, JJ.) held that the applicant's detention under art. 3 (4) on arrival was valid, as leave to land had been "refused" by the immigration officer within the meaning of the article. Viscount Caldecote, C.J., dissented, holding that leave to land could only be said to be refused within the meaning of art. 3 (4) to someone who had asked for leave to land, was attempting to land without leave, or whom it was proposed to put ashore against his wish. The applicant appealed. (*Cur. adv. vult.*)

LORD GREENE, M.R., reading the judgment of the court, said that it was argued for the applicant that the powers of the immigration officer under art. 3 (4) of the order never became exercisable, in that no refusal of leave to land could take place unless there had been a request for such leave, express or implied, and that there had been none in the present case; there was no request, for the applicant did not desire to come to this country; he was in custody and, if he had been put ashore by the naval escort, his landing would have been involuntary; he was in fact going to be landed and, but for the intervention of the immigration officer, he would thereafter have been a free man; any power to restrict him could only be exercised after an order in that behalf had been made, and no such order at that time had been made. If, in the circumstances, the immigration officer had power to refuse leave to land, his power to direct detention necessarily followed. In the opinion of the court, power to refuse leave to land did arise. By art. 1 (1) (*a*) landing without leave was prohibited. The giving of leave was merely the lifting of that prohibition. The refusal of leave was simply an intimation that the prohibition would not be lifted, and did not require any antecedent request for leave, express or implied. As to the length of time during which, or the purposes for which, an alien could lawfully be detained, under art. 3 (4), the article gave no express indication. The para. (4) was introduced into art. 3 of the order on the 1st September, 1939, and might be regarded as a war-time measure. From the point of view mentioned, it was a very unsatisfactory provision which, it was to be hoped, would not be allowed to remain in the order when normal conditions returned. The applicant was detained for inquiries. The court thought that his detention for that purpose was legitimate, and on that branch of the argument there was no ground for saying that the detention was at any stage illegal. His case was, however, put on the much broader ground that the Aliens Order had been used for the purpose of placing under detention a person who never wished to come here at all, but whom the authorities desired to keep under their eye for other reasons. That argument was not sound. All that the court had to consider was the position as it was in fact at the moment when leave to land was refused. The position was that an alien was about to be landed in the United Kingdom; that that could not happen without leave; and that that leave had been refused. There was nothing to justify the suggestion that the powers given by the order had been abused. The appeal must be dismissed, with costs.

COUNSEL: *G. O. Slade; The Attorney-General* (Sir Donald Somervell, K.C.) and *Valentine Holmes.*

SOLICITORS: *Buckeridge & Braune; Treasury Solicitor.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Mottram *v.* **South Lancashire Transport Co.**

MacKinnon, Goddard and du Parcq, L.JJ. 29th September.

Negligence—Public trolley omnibus—Signal to start given by private person—Duty of conductor.

Defendants' appeal against the judgment of Wrottesley, J., at Manchester Assizes on 13th May.

The plaintiff (and respondent to the appeal) had sued and obtained judgment for £150 damages for personal injuries alleged to have resulted from the negligence of the defendants, their servants or agents. The appellants were owners of public trolley omnibuses, on the top of one of which the respondent was travelling at the time of the accident. When she wished to alight she followed a male passenger downstairs. The latter rang the bell for the omnibus to stop and alighted before the respondent, but as he stepped off, he rang the bell twice for the bus to proceed. The respondent alighted while the omnibus was still in motion, and in fact it did not stop, so that she fell and was injured. During this time the conductress was on top of the bus and moving towards the bell, but the double bell sounded before she could reach the top of the steps.

MACKINNON, L.J., said that Wrottesley, J., had held that the conductress was guilty of an error of judgment in not going to the top of the steps on hearing the bell, or in not going to the platform to see that people were getting safely off. Even if she had reached the steps she could not have prevented the accident, because the respondent would have been in front of her and she (the conductress) could not have stopped the man in front from giving the starting signal.

GODDARD, L.J., said that a conductor's duty was to see that no one else was getting off before giving the signal to restart after a passenger had given a signal to stop at a request point. The omnibus had not stopped and an officious passenger had given the signal to start.

DU PARCQ, L.J., agreed. Appeal allowed.

COUNSEL: *E. G. Hemmerde*, K.C., and *C. H. Spafford; Wilfrid Clothier*, K.C., and *Miss M. W. Jalland.*

SOLICITORS: *T. R. Dootson*, Leigh; *Walter H. Goulding*, Bolton.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

CHANCERY DIVISION.

In re **Routledge; Marshall** *v.* **Elliott.**

Bennett, J. 14th July, 1942.

Will—Construction—Rule in Shelley's Case.

Adjourned summons.

The testator, who died in 1874, by his will devised certain freeholds to his trustees upon trust to pay the rents to R during his life, and after the death of R to hold the lands "to the use of the heirs male of the body of R living at his decease, his heirs and assigns for ever, and failing such issue" to the uses therein declared. The tenant for life died in 1937. His only child, a daughter, predeceased him leaving six children, of whom her son, the defendant D, was the eldest. This summons was taken out to determine the effect of the devise.

BENNETT, J., said that the answer to the questions depended upon whether the rule in *Shelley's Case* (1581), Co. Rep. 93, applied to this will. His lordship then read two passages from the speeches of Lord Herschell and Lord Davey in *Van Grutten* v. *Foxwell* [1897] A.C. 658, at pp. 662, 684, which he said had guided him in coming to his decision. The question he thought, really was whether the persons who took on the death of R took by descent or purchase. He had to ask himself, had it been made plain to the court, when the testator used the words "heirs male of the body of R living at his decease, his heirs and assigns for ever," he did not mean the whole series of the heirs male of the body of R taking in succession. What made it plain that the testator was not making a gift to the whole series of the heirs male in succession was that the gift was to a class to be ascertained at one point of time, namely, the death of R. That provision was inconsistent with a whole series of heirs male of the body taking in a regular course of succession. No man could at his decease have more than one heir, and, therefore, by limiting the gift to someone who fulfilled the condition of heir at a particular moment of time, the testator had made it clear that he meant his gift to take effect in one person, that person being the heir male of the body of R living at his decease, his heirs and assigns for ever. Upon that footing it was plain that the rule in *Shelley's Case* did not apply. He had been referred to *Goodright d. Lisle* v. *Pullin*, 2 Str. 729, and *Richards* v. *Lady Bergavenny*, 2 Vern. 324, and it was suggested that, putting these decisions together, he would be deciding contrary to authority if he held that this was a case to which the rule in *Shelley's Case* did not apply. The answer to that argument was to be found in the judgment of Bowen, L.J., in *Evans* v. *Evans* [1892] 2 Ch. 173. The will must be looked at as a whole. Its terms were singular. As a matter of construction, he had come to the conclusion that the gift was to the heir male of the body of R and that person's heirs and assigns. D was male and the heir of R, and he was the person now entitled to the land.

COUNSEL: *C. A. J. Bonner; M. O'Connell Stranders; H. King; A. J. Belsham.*

SOLICITORS: *Machin & Co.*, for *R. W. Bell*, Longtown, Cumberland.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Grade *v.* **Director of Public Prosecutions.**

Viscount Caldecote, C.J., Humphreys and Asquith, JJ. 5th June, 1942.

Theatres—Part of play not licensed by Lord Chamberlain—Introduction by actor without knowledge or consent and in the absence of person presenting play—Whether latter guilty of offence—Theatres Act, 1843 (6 & 7 *Vict.*, *c.* 68), *s.* 15.

Case stated by Northampton justices.

An information was preferred by the Chief Constable of Northampton charging the appellant, Grade, with having on the 6th May, 1941, at the New Theatre, Northampton, unlawfully presented for hire part of a stage play called "Movies in the Making," in a variety show called "To See Such Fun," before that part had been allowed by the Lord Chamberlain, contrary to s. 15 of the Theatres Act, 1843. At the hearing of the information the following facts were established: The appellant was in partnership in a business called "West End Varieties," carried on for the

production and presentation of theatrical and variety shows. His partner being in ill-health, the appellant was at all material times in sole control of the business transacted by the partnership. "To See Such Fun" was presented at the theatre for six days. The show was stated in the programmes sold to the public to be presented by the appellant and his partner for West End Varieties. The performance of the sketch "Movies in the Making" was duly licensed by the Lord Chamberlain, with the exception of specified words and passages, and without any further variations whatsoever. At the second performance of "To See Such Fun" the script of "Movies in the Making" as licensed was departed from by an actor on at least three occasions by the addition of certain words and passages which were accompanied by gestures of a suggestive character, a condition of the licence being thereby infringed, and a part of a new stage play presented before it had been allowed by the Lord Chamberlain. The appellant was serving with the Royal Air Force and therefore could not attend every performance. He had given instructions to artists that scripts should be adhered to, and had never before had any complaints about his productions. It was contended for him that he could not legally be convicted of an offence under s. 15 of the Act of 1843, as he was not in a position to be present in the theatre on the 6th May; and that he did not present the unauthorised additions to the script, which were made without his knowledge. It was contended for the chief constable that, as stated in the programmes, the appellant was one of the two persons who presented the show and, therefore, the offending part of "Movies in the Making." The justices were of opinion that a person could be guilty of an offence under s. 15 of the Act of 1843 even if he could not possibly be present to prevent actors from departing from a script; and that the appellant was accordingly guilty. They convicted him, fining him £10, with £3 10s. costs. He now appealed.

VISCOUNT CALDECOTE, C.J., said that the finding of the justices that there had been at least three departures from the licensed script of the sketch "Movies in the Making" at the performance in question prevented the court from deciding on the footing that a mere "gag" was introduced which was quite extraneous to the play. It was conceded that, if an actor inserted an epithet of a vulgar character, it could not be said that an unauthorised stage play or part of a stage play had been presented. Here, the justices had found that unauthorised words or passages had been introduced into the stage play. That finding meant that substantial parts of the play presented had not received the *imprimatur* of the Lord Chamberlain. The question for decision, therefore, was whether the appellant presented this play, although he was many miles away from the theatre at the time. The justices were right in finding that he was solely responsible for the presentation notwithstanding that he was absent from the theatre at the time of its production, and their decision should be upheld. They had, however, gone too far in the opinion which they had expressed, that, even if a person could not possibly be present and so in a position to prevent deviation from the licensed script, he was nevertheless guilty of an offence if the script were departed from. That would not be the case if some single word or words had been inserted which were excrescences on the play and therefore not part of it. The appeal would be dismissed.

HUMPHREYS and ASQUITH, JJ., agreed.

COUNSEL: *Sir Patrick Hastings*, K.C., and *T. M. Winning*; *Valentine Holmes*.

SOLICITORS: *Gisborne & Co.*, for *Williams & Kingston*, Northampton; *Treasury Solicitor*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Sparks *v.* Edward Ash, Ltd.

Croom-Johnson, J. 11th June, 1942.

Negligence—Pedestrian crossings—Pedestrian on crossing run down in black-out—Plea of contributory negligence not maintainable—Pedestrian Crossings (Traffic) Provisional Regulations, 1935 (*25th January*), *reg.* 3.

Action for damages for negligence.

While the plaintiff was passing over a pedestrian crossing in the black-out in December, 1940, he was knocked down and injured by the defendants' lorry, the driver of which had not seen him, because of the reduced lighting, in time to avoid him. He accordingly brought this action. By reg. 3 of the Pedestrian Crossings (Traffic) Provisional Regulations, 1935, "The driver of every vehicle approaching a crossing shall, unless he can see that there is no passenger thereon, proceed at such a speed as to make it necessary to stop before reaching such crossing."

CROOM-JOHNSON, J., said that, apart from the existence of the black-out, *Bailey* v. *Geddes* [1938] 1 K.B. 156; 81 SOL. J. 684, made it impossible to maintain the defence of contributory negligence in face of reg. 3. It was, however, argued for the defendants that reg. 3 did not apply here because of the prohibitions against the display of lights on vehicles and in streets imposed by the Lighting (Restrictions) Orders. To accept that argument would be a bold course for a judge of first instance. It was suggested that the regulation had been impliedly either repealed or modified, the extent of the suggested modification not, however, being specified. Alternatively, it was argued, the regulation had no application during the black-out. He could not so hold. Modification might or might not be right or possible, but the law as it stood must be applied. Counsel for the defendants had reserved his right to argue the question of contributory negligence if it should be held elsewhere to arise. He (his lordship) did not therefore decide whether the plaintiff's evidence as to his own actions established contributory negligence or not. It was to be added that counsel for the defendants had referred to *Franklin* v. *Bristol Tramways Co.* [1941] 1 K.B. 255, which laid down that during the black-out a new duty was imposed on pedestrians of taking into account the difficulty which an approaching driver had in seeing a person carrying no light, and of taking all reasonable care to minimise that difficulty. The accident in that case had, however, not occurred on a pedestrian crossing. Accordingly, he (his lordship) could not apply the rule of conduct, if such it was, there laid down to the present case, in view of *Bailey* v. *Geddes*, *supra*. There must be judgment for the plaintiff.

COUNSEL: *Alban Gordon*; *F. W. Wallace*.

SOLICITORS: *Mawby, Barrie & Letts*; *Stanley & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Conservative Club *v.* Westminster Assessment Committee.

Viscount Caldecote, C.J., Humphreys and Asquith, JJ.
15th June, 1942.

Rating and valuation—Reduction in value of premises due to "present emergency"—Question whether reduction applicable to all, or substantially all, classes of premises in same area—Valuation (Metropolis) Act, 1869 (32 & 33 *Vict. c.* 67), *ss.* 46, 47—*Rating and Valuation (Postponement of Valuations) Act*, 1940 (3 & 4 *Geo.* 6, *c.* 21), *s.* 1 (1), (2).

Appeal by case stated from a decision of London Quarter Sessions.

The Conservative Club was assessed in the quinquennial valuation list for the City of Westminster, which came into force in April, 1939, at £8,500 gross and £7,080 rateable value. After the outbreak of the war the club made a requisition for insertion in a provisional list at reduced rates. The Rating and Valuation Act (Postponement of Valuations) Act, 1940, having come into force, the Westminster Assessment Committee decided that the club should be inserted in the supplemental list of the 15th July, 1940, at £6,000 gross and £5,600 rateable values. The club appealed to quarter sessions. The following facts were established at the hearing before quarter sessions: The majority of hereditaments in Westminster were reduced in value, but in varying degrees, by reason of some or all of the same factors, but a substantial number of hereditaments in that district were not affected in value by any of those factors. There was no general reduction in value of all or substantially all hereditaments or classes of hereditament in Westminster by reason of these factors or circumstances. Quarter sessions held that the present emergency and the conditions arising out of it were a "cause" within s. 47 of the Valuation (Metropolis) Act, 1869, and that the reduction in value was peculiar to the club and not applicable to the locality generally. They accordingly allowed the club's appeal and reduced its assessment to £5,000 gross and £4,163 rateable values. The assessment committee appealed. By the Valuation (Metropolis) Act, 1869, a supplemental valuation list, showing all alterations which have taken place in the preceding year, shall be made out in each of the first four years of a quinquennial period. By s. 47 it is provided that, if in any year the value of any hereditament is increased or decreased, steps may be taken to have it entered in the supplemental list at the new value. By s. 1 (1) of the Rating and Valuation (Postponement of Valuations) Act, 1940, the next valuation list in the metropolis is to be postponed till after the end of the present emergency. By s. 1 (2) any increase or reduction in value attributable to the present emergency which "(*a*) is peculiar to a particular hereditament; or (*b*) affects a particular hereditament and also other hereditaments of a comparable character in the rating area in question, but does not represent a general alteration in the value of all classes, or substantially all classes, of hereditaments in that area" shall be deemed to be an "alteration" within s. 46 and an "increase or reduction in value" within s. 47 of the Act of 1869. (*Cur. adv. vult.*)

VISCOUNT CALDECOTE, C.J., said that it was laid down in *Camberwell Assessment Committee* v. *Ellis* [1900] A.C. 510, that, in order that a new assessment might be made between quinquennial valuations, the alteration in value must be shown to arise from a cause specially and directly affecting the particular hereditament or class of hereditaments. It was not enough that an alteration in value had taken place as the result of some "general economic or social change" (*see per* Lord Robertson [1900] A.C., at p. 525). Early in the war unsuccessful attempts had been made to rely on war conditions as a cause entitling a ratepayer to the relief of s. 47 of the Act of 1849 (*R.* v. *Westminster Assessment Committee, ex parte Junior Carlton Club Trustees* (1940), 38 L.G.R. 326; 84 SOL. J. 596; and *R.* v. *Westminster Assessment Committee, ex parte St. James' Court Estate, Ltd.* (1941), 85 SOL. J. 46). The Act of 1940, which came into force on the 21st March, 1940, made important changes in the law of rating. Section 1 (2) began by appearing to enlarge the field within which effect could be given to alterations in value during the suspension of quinquennial valuations, for it applied to "any increase or reduction . . . attributable . . . to the present emergency." Those words were, however, only allowed by succeeding provisions to operate to a limited extent. Section 1 (2) (*a*) presented no difficulty. As for s. 1 (2) (*b*), to what extent the alteration in value affected a particular hereditament and also other hereditaments of a comparable character in the area could only be ascertained from evidence, and a decision on that matter by the appropriate tribunal based on sufficient evidence could not be disturbed. The same applied to the next inquiry, which must show that the alteration did not represent a general alteration in the value of substantially all classes of hereditaments in the area, if relief was to be obtained in the provisional list. "Substantially" connoted a question of degree, which was a question of fact. It was unnecessary to decide whether the decision of quarter sessions was correct that the war and the conditions arising out of it, in particular the black-out, were a "cause" within s. 47 of the Act of 1869—that was a question of mixed law and fact—because of what was the critical part of their decision, namely, that the reduction in value was not generally applicable to all hereditaments in Westminster, but was peculiar to the club and other comparable hereditaments. The evidence of the chief witness for the club, particularly that relating to important classes of hereditament which had not suffered a reduction

in value, gave ample support for the findings of quarter sessions. The appeal would be dismissed.

HUMPHREYS and ASQUITH, JJ., agreed.

COUNSEL: *Montgomery*, K.C., *Craig Henderson*, K.C., and *Squibb; Comyns Carr*, K.C., and *F. Grant.*

SOLICITORS: *Allen & Son; Richardson, Sadler & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

J. Lyons & Co., Ltd. *v.* Knowles.

Asquith, J. 27th July, 1942.

Landlord and tenant—Assignment of lease—Covenant in lease that successive assignors to remain liable for rent—Assignment by lessee—Further assignment by assignee—Default by second assignee—Whether lessee liable.

Action for arrears of rent.

The plaintiff company leased premises to a tenant, who covenanted that if he should assign the lease the assignment should contain a covenant by the assignee directly with the lessor to observe the covenants in the lease, including the covenant to pay rent, and not, in his turn, to assign the lease without the landlord's consent. The lessee assigned the lease to the defendant, and the tripartite deed of assignment above provided for was made, containing an undertaking by the assignee (the defendant) to pay the rent reserved by the lease for the residue of the term of the lease. The defendant in due course assigned the lease to a company by means of a similar tripartite agreement between himself, the lessor and the company. The company having fallen into arrear with the rent, the plaintiffs now sued the defendant under the tripartite deed of assignment to him for the amount of the rent unpaid. (*Cur. adv. vult.*)

ASQUITH, J., said that the plaintiffs argued that the deed of assignment to the defendant meant exactly what it said, namely, that the defendant covenanted to remain liable for the rent for the whole of the residue of the term of the lease whether he reassigned or not, and not merely for that part of the residue during which his own interest as an assignee should continue. The defendant relied on the similar deed of assignment in favour of the company as impliedly releasing him of his obligations as from the moment of its execution. The company having, as assignee, engaged with the lessor to pay the rent for the whole of the residue of the term, the defendant contended that the inference was that the second assignment operated as a novation, impliedly substituting the liability of the company for that of the defendant, and absolving the latter. There was no authority on the point in the law of landlord and tenant, so counsel had been thrown back on analogy. Leading counsel for the defendant submitted, as a general proposition, that, when property which carried with it obligations to a third party was transferred from A to B, then, if the third party assented to the transfer in such circumstances that the transferee became directly liable to the third on the same obligations as those of the transferor, the necessary inference was that the third party accepted the obligations of the transferee in substitution for those of the transferor, who was accordingly discharged. Counsel relied for illustration on cases on the law of partnership, such as *Bilborough* v. *Holmes*, 5 Ch. D. 255, at pp. 260, 261, and *Morton's* case, L.R. 16 Eq. 104. It was argued for the plaintiffs that such cases had no application to the law of landlord and tenant with its peculiar incidents of privity of estate, etc.; and that the defendant, on his own argument, had to show, but had failed to do so, that, when a similar covenant was exacted from the second assign, that must by necessary implication, release the first assign. The defendant, it was emphasised, was under an express obligation to pay the rent and perform the covenants of the lease during the residue of the term, and it was argued that the plaintiffs were stipulating for as many obligations as there were assigns, the object being to add to the plaintiffs' common law rights and to destroy the immunity of an assign who reassigned. In his (his lordship's) opinion, the plaintiffs' argument prevailed. Their object was to bind for the whole of the residue of the term each and all the successive assigns by the covenants of the lease, including that to pay rent. The implied term for which the defendant contended was not made out. The general proposition of counsel for the defendant was unsound. Where an original lessee assigned privity of estate had the result that there were many obligations, for instance, that to pay rent, which the lessor could enforce in identical terms against either of two persons in respect of the same property. There must be judgment for the plaintiffs.

COUNSEL: *Wynn Parry*, K.C., and *Wallace; Denning*, K.C., and *Crispin* (for *Leon*, on war service).

SOLICITORS: *Bartlett & Gluckstein; Rubinstein, Nash & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY.

Winter, E. E. *v.* Winter, J. S.

Henn Collins and Langton, JJ. 14th July.

Husband and wife—Undefended divorce—Decree nisi on ground of desertion—Wife's petition—Husband's application for rehearing—No merits in application—When allowed—Public interest—Matrimonial Causes Rules, 1937 (S.R. & O., 1937, No. 1113/L.14), r. 36 (1).

Application by a husband respondent to a divorce petition on the ground of desertion in which a decree *nisi* of divorce had been pronounced on 27th February, 1942, for a rehearing on the ground that the decree was against the justice of the case in that it was untrue that he had deserted his wife and he now wished to put the real facts before the court.

The parties were married on 7th May, 1924, but during 1930, 1931 and up to 1933 they lived apart. The husband on several occasions invited the wife to return to him, and there was nothing in the correspondence to suggest that his invitations were not genuine, but she declined on the ground that his proposals were neither practical nor attractive. On 4th October, 1940, she filed a petition asking for the dissolution of her marriage on the ground of her husband's desertion. He consulted his solicitor and decided not to defend the petition, as, to quote his affidavit: "I thought at the time as my wife had refused my request to return and live with me she had definitely made up her mind not to come back, and the best thing to do was to let her have her divorce as she must have met someone she cared for, and I did not want to stand in the way of her happiness." Accordingly he did not enter an appearance to the petition or take any part in the trial thereof. A decree *nisi* was pronounced at York Assizes on 27th February, 1942, on the ground of his desertion of his wife for three years immediately preceding the petition. The Matrimonial Causes Rules, 1937, r. 36 (1), provides: "An application for rehearing of a cause, heard by a judge alone where no error of the court at the hearing is alleged, shall be made to a Divisional Court of the Probate Division."

LANGTON, J., said that so far as the applicant was personally concerned, his appeal had no vestige of merit. In the full possession of his senses, and with competent legal advice, he determined not to defend the petition and to let the matter go. In matrimonial matters, however, there was always something more to be considered than the mere individual merits of the parties. The Matrimonial Causes Act, 1937, laid stress upon the duty of the court to consider the public as well as the private interests involved in matrimonial matters. One had to remember also that a question of status was involved, and that the interests of any child or children of the marriage were deeply affected by a decree of dissolution. In *Manners* v. *Manners and Fortescue* [1936] P. 117, both the President and Langton, J., himself were concerned lest, in allowing the appeal, they might possibly be trenching on the appellate jurisdiction which was really reserved to the Court of Appeal. In the present case, being satisfied that there was no possibility of an appeal to the Court of Appeal, he was more concerned as to the question whether there was any right of appeal to the Divisional Court. His lordship's doubts on this matter were set at rest by *Lester Jones* v. *Lester Jones and Stirett*, 13 L.T.R. 684. In that case, under the then existing r. 62, no suggestion was made that there was not power on the part of the court to grant a rehearing. In that case, as in this, no error was alleged, and the complainant, as here, admitted that he had had full notice of the proceedings and had of his own volition elected to stand aside from them. The decree would be set aside, and a rehearing granted on the conditions that the appellant paid the whole of the taxed costs of the wife's suit to date, and the whole of the taxed costs of the appeal.

HENN COLLINS, J., said that the appeal succeeded on the basis that there was no error in the court below. Inasmuch as the petitioner swore that the respondent had left her on a named date, it could not be said that there was no evidence of desertion; but to say that he left her and to say no more about the circumstances of the parting, while it may found an inference of desertion, was not a satisfactory way of disposing of a case. It was necessary to examine closely the circumstances in which the parting took place.

COUNSEL: *L. F. Sturge; Geoffrey Tyndale.*

SOLICITORS: *Hyde, Mahon & Pascall*, for *Frank J. Lambert & Co.*, Gateshead; *Gibson & Weldon*, for *Tasker Hart & Munby*, Scarborough.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Parliamentary News.

PROGRESS OF BILLS.

ROYAL ASSENT.

The following Bills received the Royal Assent on the 22nd October:—

Appropriation (No. 3).
Courts (Emergency Powers) Amendment.
Greenwich Hospital.
India and Burma (Temporary and Miscellaneous Provisions).
Local Elections and Register of Electors (Temporary Provisions).
London Midland and Scottish Railway Order Confirmation.
Prolongation of Parliament.
Welsh Courts.

Rules and Orders.

S.R. & O., 1942, No. 2163/L.32.

COURTS (EMERGENCY POWERS), ENGLAND.

THE COURTS (EMERGENCY POWERS) (No. 2) RULES, 1942.
DATED OCTOBER 22, 1942.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by section 2 of the Courts (Emergency Powers) Act, 1939,* and all other powers enabling me in this behalf, do hereby make the following Rules:—

1. The appropriate court for the giving of the leave required by section 2 of the Courts (Emergency Powers) (Amendment) Act, 1942, for instituting proceedings for the recovery of mortgaged property shall be the court in which the proceedings are sought to be instituted, and accordingly the words "or for instituting proceedings for the recovery of mortgaged property" shall be inserted after the words "in lieu of foreclosure" in Rule 3 of the principal Rules.

* 2 & 3 Geo. 6, c. 67.

2. An application for leave to institute proceedings for the recovery of possession of mortgaged property shall be by originating summons and accordingly the words " or for the recovery of possession of mortgaged property " shall be inserted after the words " in lieu of foreclosure " in paragraph (1) of Rule 14 of the principal Rules.

3. In Rule 15 (6) of the principal Rules, the following words " or (*c*) the court has given leave under the Act to enforce an order for possession of the mortgaged land " shall be omitted.

4. The following Rule shall be inserted after Rule 15B of the principal Rules :—

" 15C.—(1) Subject to the provisions of paragraph (2) of this Rule, the persons to be made respondents to an application under the Courts (Emergency Powers) Acts, 1939 to 1942, by a mortgagee of property for leave to exercise against the property any right or remedy shall be as follows :—

(i) where the mortgagor (whether under personal liability or not) is the owner of the equity of redemption, the mortgagor ;

(ii) where the equity of redemption has been assigned, the assignee (whether under personal liability or not) ;

(iii) where the mortgagor or assignee is dead, the personal representative of the mortgagor or assignee :

Provided that if the mortgagor or assignee has been dead for a period of more than six months and no personal representative has been constituted, the application may be made *ex parte ;*

(iv) where the equity of redemption is vested in a trustee, the trustee :

Provided that if the equity of redemption is vested in a trustee as trustee in bankruptcy and the applicant has before making the application obtained from such trustee a written statement that he has no objection to the leave sought being given, the application may be made *ex parte.*

(2) In any application in which a person who is not a respondent to the summons under the provisions of paragraph (1) of this Rule would be affected by the exercise of any such right or remedy as aforesaid, the applicant shall, on applying at the chambers of the judge for an appointment to hear the application, leave at chambers with a copy of the summons a statement giving the name of such person and showing what his interest is in the mortgaged property, and the court or a judge may direct that such person, or any other person who the court or a judge may think would be affected by the granting of the application, be added as a respondent to the application.

(3) If the mortgagee is uncertain as to what persons would be affected by the granting of the application, he may issue his application *ex parte*, and on applying for an appointment to hear the application leave at chambers a statement giving the names of all persons who he thinks may be affected and showing the interests of such persons, and the court or a judge may direct which, if any, of such persons are to be made respondents.

(4) Where the court or a judge directs that a person be added as a respondent to a summons it shall not be necessary to amend the summons, but the original summons and the copy served shall be endorsed with a notice to the effect of Form No. 18, and the person named in the notice shall be treated for all purposes as though he were a person named as respondent to the summons."

5. The following Form shall be added to the Appendix to the principal Rules :—

" 18.

To (*name and address of person to be served*)

TAKE NOTICE that the Judge has directed you to be served as a Respondent to the within Summons. The Summons will be heard before Master at the Chambers of the Judge Room No. Royal Courts of Justice, Strand, London, on day the day of 194 at o'clock in the noon and if you desire to show cause why an Order should not be made, you must attend at the place and time aforesaid."

6. The following omissions shall be made in the Courts (Emergency Powers) (No. 1) Rules, 1941 :—

(i) the words " or paragraph (*b*) of subsection (2) " in Rule 2 (1) ;

(ii) the words " or paragraph (*b*) of subsection (2) of that section " in Rule 4 ;

(iii) Rule 7 ;

(iv) Form No. 14 in the Forms added by Rule 11 to the Appendix to the principal Rules.

7. In these Rules, " the principal Rules " means the Courts (Emergency Powers) (Consolidation) Rules, 1940,† as amended by the Courts (Emergency Powers) (No. 2) Rules, 1940,‡ the Courts (Emergency Powers) (No. 1) Rules, 1941,§ and the Courts (Emergency Powers) (No. 1) Rules, 1942.‖

8. These Rules may be cited as the Courts (Emergency Powers) (No. 2) Rules, 1942.

Dated the 22nd day of October, 1942.

Simon, C.

† S.R. & O. 1940 (No. 408) I, p. 213. ‡ S.R. & O. 1940 (No. 1306) I, p. 222.
§ S.R. & O. 1941 (No. 803) I, p. 133. ‖ S.R. & O. 1942 No. 1515.

S.R. & O., 1942, No. 2164/L.33.

COURTS (EMERGENCY POWERS), ENGLAND.

THE COUNTY COURT (EMERGENCY POWERS) (NO. 1), RULES, 1942.

DATED OCTOBER 22, 1942.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by section 2 of the Courts (Emergency Powers) Act, 1939,* and all other powers enabling me in this behalf, do hereby make the following Rules :—

* 2 & 3 Geo. 6, c. 67.

1. The appropriate court for the giving of the leave required by section 2 of the Courts (Emergency Powers) (Amendment) Act, 1942, for instituting proceedings for the recovery of mortgaged property shall be the court in which the proceedings are sought to be instituted, and accordingly the words " or for instituting proceedings for the recovery of mortgaged property " shall be inserted after the words " in lieu of foreclosure " in Rule 3 of the principal Rules.

2. An application for leave to institute proceedings for the recovery of mortgaged property shall be by originating application, and Rule 18 (1) of the principal Rules shall apply.

3. In Rule 18 of the principal Rules—

(i) the following paragraph shall be substituted for paragraph (2) :—

" (2) Where an originating application under this Rule relates to land, the application may, by leave of the court, in a case of vacant possession, if service cannot otherwise be effected, be served by affixing the application on a conspicuous part of the property to which the application relates."

(ii) paragraph (3) and the words " or (*c*) the court has given leave under the Act to enforce an order for possession of the mortgaged land " in paragraph (6) shall be omitted, and Form No. 10 in the Appendix shall be omitted.

4. The following Rule shall be inserted after Rule 18B of the principal Rules :—

" 18C.—(1) Subject to the provisions of paragraph (2) of this Rule, the persons to be made respondents to an application by a mortgagee of property for leave to exercise against the property any right or remedy shall be as follows :—

(i) where the mortgagor (whether under personal liability or not) is the owner of the equity of redemption, the mortgagor ;

(ii) where the equity of redemption has been assigned, the assignee (whether under personal liability or not) ;

(iii) where the mortgagor or assignee is dead, the personal representative of the mortgagor or assignee :

Provided that if the mortgagor or assignee has been dead for a period of more than six months and no personal representative has been constituted, the application may be made *ex parte ;*

(iv) where the equity of redemption is vested in a trustee, the trustee :

Provided that if the equity of redemption is vested in a trustee as trustee in bankruptcy and the applicant has before making the application obtained from such trustee a written statement that he has no objection to the leave sought being given, the application may be made *ex parte.*

(2) In any application in which a person who is not a respondent under the provisions of paragraph (1) of this Rule would be affected by the exercise of any such right or remedy as aforesaid, the applicant shall include in his application a statement giving the name of such person and showing what his interest is in the mortgaged property, and containing a request for a direction that such person be added as a respondent to the application.

(3) If the mortgagee is uncertain as to what persons would be affected by the granting of the application, he may, in lieu of naming any respondent therein, file therewith a statement giving the names of all persons who he thinks may be affected and showing the interests of such persons and containing a request for a direction which if any of such persons are to be made respondents.

(4) On the filing of an application which is accompanied by a request under paragraph (2) or paragraph (3) of this Rule, the registrar shall, after entering the application in the books of the court but before fixing a day for the hearing of the application, fix a day for the consideration by the court of the question what persons (if any) are to be made respondents.

(5) On the consideration of the applicant's request, the court may direct that one or more of the persons named by the applicant or any other person who the court may think would be affected by the granting of the application be added as a respondent or respondents to the application.

(6) When such a direction has been given and the applicant has filed in the court office as many copies of the application as there are respondents, the registrar shall fix a day for the hearing of the application and give notice to the applicant of the day so fixed, and, subject as aforesaid, the provisions of Order VI, Rule 4 (2), shall apply."

5. The following omissions shall be made in the County Court (Emergency Powers) (No. 1) Rules, 1941 :—

(i) the words " or paragraph (*b*) of subsection (2) " in Rule 3 (1) ;

(ii) Rule 10.

6. In these Rules " the principal Rules " means the County Court (Emergency Powers) (Consolidation) Rules, 1940,† as amended by the County Court (Emergency Powers) (No. 2) Rules, 1940,‡ and the County Court (Emergency Powers) (No. 1) Rules, 1941.§

7. These Rules may be cited as the County Court (Emergency Powers) (No. 1) Rules, 1942.

Dated the 22nd day of October, 1942.

Simon, C.

† S.R. & O. 1940 (No. 531) I, p. 224. ‡ S.R. & O. 1940 (No. 1422) I, p. 238.
§ S.R. & O. 1941 (No. 804) I, p. 140.

The Bromley magistrates have presented a grandfather's clock, dated 1760, to Mr. R. W. H. Fanner, their clerk, who is leaving to become clerk to the Shefficld city justices.